

REMARKS

Claims 1 - 12 are pending in the present application.

Applicant amended the specification to correct a typographical error.

In section 2 of the Office Action, claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by either U.S. Patent No. 5,408,326 to Wang (hereinafter "the Wang patent") or U.S. Patent No. 6,154,284 to McAndrew et al. (hereinafter "the McAndrew et al. patent"). Also, in section 4 of the Office Action, claims 1 - 12 are rejected under 35 U.S.C. 112, second paragraph as being indefinite because (a) none of the claims set forth any means or manner in which modulation can "improve the sensitivity of an absorbance measurement", and (b) claims 2 and 12 do not set forth any function or structure that relates the movement of the beam from the sample area to the rest of the apparatus.

Below, Applicant is first addressing the rejection under section 112, and then addressing the rejection under section 102(b).

Applicant amended claims 1 and 12 to (a) delete the phrase "improving the sensitivity of an absorbance measurement", as the phrase does not appear to be necessary for patentability, and (b) provide a proper relationship between the elements of the claims. Additionally, Applicant amended claims 2 and 5 - 8 to improve their form and for consistency with the claims from which they depend.

Applicant respectfully requests reconsideration and withdrawal of the section 112 rejection of claims 1 - 12.

Claim 1 provides for an apparatus for measuring absorbance. Applicant amended claim 1 to clarify that it includes a modulator for varying a position of incidence of a sample beam upon a cell having a sample area. An exemplary embodiment of the modulator is shown in FIG. 2 where a variation in sample beam angle is achieved by use of a galvanometer 115 to control the movement of a movable scanning mirror 116. Another exemplary embodiment is shown in FIG. 3 where a scanner 130 is arranged to periodically move a microchip in the directions indicated by double arrow 131. Other exemplary embodiments are also disclosed in the specification.

Page 2 of the Office Action states that both of the Wang and McAndrew et al. patents include means to modulate a beam. More specifically, the Office Action cites the McAndrew et al. patent for its disclosure of modulating diode current and wavelength (col. 8, lines 56 – 59), and the Office Action cites the Wang patent for its disclosure of diodes transmitting alternating pulses of light as a form of modulation (col. 9, lines 18 – 22).

Neither of (a) the modulation of **diode current and wavelength**, as disclosed by the McAndrew et al. patent, nor (b) the **alternating pulses of light**, as disclosed by the Wang patent, are expressly or inherently descriptive of a modulator for **varying a position of incidence** of said sample beam upon a cell having a sample area, as recited in claim 1. Accordingly, neither of the McAndrew et al. patent nor the Wang patent anticipates claim 1.

Applicant respectfully requests reconsideration and withdrawal of the section 102(b) rejection of claim 1.

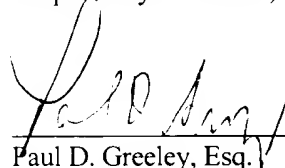
Applicant notes with appreciation that in section 5 of the Office Action the Examiner indicates that the disclosure appears to contain allowable subject matter. Applicant believes that the present amendment clarifies the recitals of the claims and, thus, places the claims in condition for allowance.

In view of the foregoing, Applicant respectfully submits that all claims presented in this application patentably distinguish over the prior art. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed to allowance.

Respectfully submitted,

Date

9-17-03



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